

### **REMARKS / ARGUMENTS**

The present application includes pending claims 1-25.

Claims 1-3, 12-15 and 23 are rejected under 35 U.S.C. § 103(a) as being unpatentable over USP 6,810,018 ("Paranchych") in view of USP 7,443,867 ("Hsu").

Claims 4-11, 16-22 and 24-25 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Paranchych in view of Hsu, and further in view of USP 7,032,037 ("Garrett").

The Applicant respectfully submits that the claims define patentable subject matter and request reconsideration in view of the following remarks.

#### **I. Examiner's Response to Arguments**

The Examiner states the following in pages 3-6 of the Final Office Action:

"Applicant's remarks and argument to the rejected claims are insufficient to distinguish the claimed invention from the cited prior arts or overcome the rejection of said claims under 35 U.S.C. 103 as discussed below. Applicant's argument with respect to the pending claims have been fully considered, but they are not persuasive for at least the following reasons.

In response to **Applicant's argument that there is no suggestion to combine the references, i.e., Romero (US42004/0054780) and Garrett et al. (US#7,032,037) as proposed in the office action.** The Examiner recognizes that references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary

and secondary references... The Examiner emphasizes for the record that the claims employ a broader in scope than the Applicant's disclosure in all aspects. In addition, the Applicant has not argued any narrower interpretation of the claim limitations, nor amended the claims significantly enough to construe a narrower meaning to the limitations..."

The Examiner has made extensive arguments in pages 3-6 of the Final Office Action. However, the Examiner's above arguments are unresponsive to Applicant's arguments stated in the 4/6/09 response.

More specifically, the Examiner re-opened prosecution after Applicant's filing of a Pre-Appeal Brief on 3/24/08. The Examiner relied on new references, namely Paranchych and Hsu, and issued a non-Final Office Action on 1/15/09 to reject Applicant's independent claims 1 and 13. In other words, the Examiner no longer relied on the combination of Romero and Garnett to reject Applicant's independent claims 1 and 13, as in the previous Final Office Actions mailed on 11/23/07. The Applicant filed a response on 4/6/09 to rebut Examiner's rejection arguments based on the combination of Paranchych and Hsu (*see* pages 10-15 of 4/16/09 response).

**As shown in the Examiner's response above, the Examiner made arguments on the combination of Romero and Garnett, which does not form the basis of the rejection stated in the previous Office Action (dated 01/15/09). In this regard, the Applicant respectfully points out that the present Final Office Action (dated 08/04/09) was improperly issued since it is**

**not responsive to Applicant's arguments in the 4/16/09 response. The Applicant respectfully requests that the finality of the 8/4/09 Final Office Action be withdrawn.**

Accordingly, the Applicant maintains the arguments stated in the 4/6/09 response, and respectfully submits that the combination of Paranchych and Hsu does not establish a *prima facie* case of obviousness to reject Applicant's independent claims 1 and 13. Applicant's independent claims 1 and 13 are submitted to be allowable.

For the convenience of the Examiner, the Applicant is re-submitting the arguments stated in the 4/6/09 response herein below.

## **II. REJECTION UNDER 35 U.S.C. § 103**

In order for a *prima facie* case of obviousness to be established, the Manual of Patent Examining Procedure, Rev. 6, Sep. 2007 ("MPEP") states the following:

The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007) noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Federal Circuit has stated that "rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."

See the MPEP at § 2142, citing *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), and *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d at 1396 (quoting Federal Circuit statement with approval). Further, MPEP § 2143.01 states that “the mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art” (citing *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007)). Additionally, if a *prima facie* case of obviousness is not established, the Applicant is under no obligation to submit evidence of nonobviousness:

The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.

See MPEP at § 2142.

**A. The Proposed Combination of Paranchych and Hsu Does Not Render Claims 1-3, 12-15 and 23 Unpatentable**

The Applicant turns to the rejection of claims 1-3, 12-15 and 23 under 35 U.S.C. § 103(a) as being unpatentable over Paranchych in view of Hsu.

**A(1). Independent Claims 1 and 13**

With regard to the rejection of independent claim 13 under 103(a), the Applicant submits that the combination of Paranchych and Hsu does not disclose

or suggest at least the limitations of "...a multi-server platform having a common backplane, comprising: receiving digital information on a digital communications link at a blade server manager," as recited in Applicant's independent claim 13.

With respect to claims 13-15 and 23, the Examiner states the following:

With respect to claims 13-15 and 23, the references disclose a novel system and method for controlling the capacity utilization of the servers to perform blade server load balancing functions, according to the essential features of the claims. Paranchych et al. (US46,810,018) discloses in Fig. 3 a block diagram illustrated a system and method for controlling the capacity utilization of the servers comprising **a blade server manager (access terminal AT)**, two or more **blade servers (access points APs)**, **interfaces for communicating between the blade server manager (access terminal AT) and each blade server (access points APs)**(Col. 2, lines 1 plus);

See the 1/15/09 Office Action at page 3 (emphasis added). The Applicant maintains the arguments made on 4/6/09. The Examiner relies for support on Paranchych's Fig. 3, and equates Paranchych's CDMA communication network 10 to Applicant's "multi-server platform". The Applicant respectfully disagrees that a CDMA wireless network system can be analogous to a "multi-server platform" at all. More specifically, the Examiner equates the access terminal (AT) 20 to Applicant's "blade server manager", the access point (AP) 20a to Applicant's blade server, and the wireless interface between the AT 20 and the AP 20 to Applicant's "common backplane". After reviewing the Paranchych reference, the Applicant points out that there is no support for the allegation that Paranchych discloses or suggests that the AT 20 and the AP 20a are servers, let

alone discloses Applicant's respective "blade server manager" and "blade server".

In addition, even assuming for the sake of argument that the AT 20 and AP 20a are the respective "blade server manager" and "blade server" (which they are not), the Examiner's argument is still deficient. Paranchych clearly discloses that a wireless interface linking between the AT 20 (i.e., the alleged "blade server manager") and AP 20a (i.e., the alleged "blade server"). In this regard, the wireless interface is not "a common backplane", as alleged by the Examiner. Likewise, Hsu does not disclose the above deficiencies of Paranchych, namely, "a blade server manager", "a blade server" and "a common backplane" in Applicant's "multi-server platform".

Therefore, based on the above rationale, the Applicant maintains that the combination of Paranchych and Hsu does not disclose or suggest at least the limitations of "... a multi-server platform having a common backplane, comprising: receiving digital information on a digital communications link at a blade server manager," as recited in Applicant's independent claim 13.

Furthermore, the Examiner states the following in the Office Action:

"In the same field of endeavor, Hsu et al. (US#7,443,857) teaches in Fig. 2 a flow chart illustrated a method and system for connection routing based on link capacity utilization, in which at block 210, a desired link utilization limit is included in a virtual circuit connection setup message. The link utilization limit indicates a maximum utilization for links to be used for the virtual circuit connection. In

block 220, the link utilization limit is accessed by a node of a network. In block 230, the link utilization limit is compared to the utilization of a link coupled to the node. The comparison of the link utilization limit can be to a current utilization of the link. Alternatively, the link utilization limit can be to a current utilization of the link plus an additional bandwidth required for the virtual circuit connection (Col. 6, lines 15 plus)."

See the 1/15/09 Office Action at page 4. The Examiner relies for support on Hsu's Fig. 2 and the following citation:

"FIG. 2 illustrates a flow chart for a method 200, in accordance with embodiments of the present invention. In block 210, a desired link utilization limit is included in a virtual circuit connection setup message. The link utilization limit indicates a maximum utilization for links ... is compared to the utilization of a link coupled to the node. ... Alternatively, the link utilization limit can be to a current utilization of the link plus an additional bandwidth required for the virtual circuit connection. Responsive to the comparison of block 230, if utilization of the link is greater than the link utilization limit, in block 240 the link is not used for the virtual circuit connection. Referring once again to FIG. 1, to setup an exemplary virtual circuit from node 121 to node 133, **a setup message can include a link utilization limit of 75 percent** (block 210 of FIG. 2). ...In accordance with block 220 of FIG. 2, **node 121 can access the link utilization limit of the setup message**. In block 230 of FIG. 2, the link utilization limit can be compared to the utilization of link 140. **Assuming that link 140 has a utilization of 80 percent, it will not be used in the present routing of the virtual circuit. ..., presuming that none of links 125, 150 nor 138 have a link utilization of 75 percent or greater.**"

See Hsu at col. 6, lines 15-49 (emphasis added). The Examiner seems to equate Hsu's network switch apparatus 300 to Applicant's "blade server manager" or "blade server", and Hsu's setup message with link utilization limit to

Applicant's "receiving capacity utilization information embedded in spare link bandwidth from a plurality of blade servers".

The Applicant respectfully disagrees, and refers the Examiner to the above argument that Hsu does not disclose or suggest that the network switch apparatus 300 is "a blade server" or "a blade server manager". In addition, Hsu also does not disclose that the links between the network nodes (i.e., switch apparatus 300) are common backplane, which is within a multi-server platform.

Furthermore, Hsu discloses that the setup message is to carry the link utilization information limit (i.e., utilization limit set at 70 percent of link bandwidth). In other words, **Hsu's link utilization limit information, which is expressed as a percentage of link bandwidth, pertains to the link itself (i.e., the connection media). In this regard, Hsu's link utilization limit information has nothing to do with the capacity utilization of the blade server, which is sent to the blade server manager.** In this regard, Hsu still does not disclose Applicant's "receiving capacity utilization information ...from a plurality of blade servers," as recited in Applicant's claim 13.

Moreover, the Examiner seems to allege that Hsu discloses Applicant's "spare link bandwidth". The Applicant respectfully disagrees, and points out that the Examiner's interpretation is inaccurate. For example, Hsu discloses that if the set up message sets the link utilization limit to 75% bandwidth limit, the node



(i.e., the switch apparatus 300) would not route the traffic to another link with a capacity limit set at 80% bandwidth (see Hsu at col. 6, lines 40-45). In other words, Hsu merely suggests keeping an extra 5% bandwidth safety margin above the 75% capacity limit to avoid overloading the link traffic. In this regard, Hsu does not disclose the Applicant's "spare link bandwidth", which carries the blade server's capacity utilization information to the blade server manager.

Based on the above rationale that Hsu does not disclose the alleged "spare link bandwidth" (for carrying blade server's capacity utilization), Hsu consequently, also does not disclose or suggest that the set up message is "embedded in the spare link bandwidth". Likewise, Paranchych does not overcome the deficiencies of Hsu. Therefore, the combination of Paranchych and Hsu does not disclose or suggest "receiving capacity utilization information embedded in spare link bandwidth from a plurality of blade servers," as recited in Applicant's claim 13.

Based on the foregoing rationale, the Applicant maintains that the combination of Paranchych and Hsu does not establish a prima facie case of obviousness to reject Applicant's claim 13, and respectfully request that the rejection of claim 13 under 35 U.S.C. § 103(a) be withdrawn.

Claim 1 is similar in many respects to the system of claim 13. Therefore, the Applicant submits that claim 1 is allowable at least based on the above reasons.

**A(2). Dependent Claims 2-3, 12, 14-15 and 23**

Based on at least the foregoing, the Applicant believes the rejection of independent claims 1 and 13 under 35 U.S.C. § 103(a) as being unpatentable by Paranchych in view of Hsu has been overcome and request that the rejection be withdrawn. Additionally, claims 2-3, 12, 14-15 and 23 depend from independent claims 1 and 13, respectively, and are, consequently, also respectfully submitted to be allowable.

The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 1-3-12-15 and 23.

**B. The Proposed Combination of Paranchych, Hsu and Garnett Does Not Render Claims 4-11, 16-22 and 24-25 Unpatentable**

Claims 4-11, 16-22 and 24-25 are rejected under 35 U.S.C. §103(a) over Paranchych and Hsu as applied to claims 1 and 13, and further in view of Garnett .

Based on at least the foregoing, the Applicant believes the rejection of independent claims 1 and 13 under 35 U.S.C. § 103(a) as being unpatentable by the combination of Paranchych and Hsu has been overcome, and requests that the rejection be withdrawn. Garnett does not overcome the deficiencies of both Paranchych and Hsu. Additionally, claims 4-11, 16-22 and 24-25 depend directly

or indirectly from independent claims 1 and 13, respectively, and are, consequently, also respectfully submitted to be allowable.

The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 4-11, 16-22 and 24-25.

**CONCLUSION**

Based on at least the foregoing, the Applicant believes that all claims 1-25 are in condition for allowance. If the Examiner disagrees, the Applicant respectfully requests a telephone interview, and requests that the Examiner telephone the undersigned Patent Agent at (312) 775-8093.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

Date: September 28, 2009

/ Frankie W. Wong /

Frankie W. Wong  
Registration No. 61,832  
Patent Agent for Applicant

McAndrews, Held & Malloy, Ltd.  
500 West Madison Street, 34th Floor  
Chicago, Illinois 60661  
(312) 775-8093 (FWW)